



OTP Weekly Briefing

9-14 June 2011 – Issue #91

HIGHLIGHTS:

- **PRE-TRIAL CHAMBER II REQUESTS OBSERVATIONS ON DESIRABILITY AND FEASIBILITY OF HOLDING CONFIRMATION HEARING IN KENYA – PROSECUTION AND PUBLIC COUNSEL FOR VICTIMS OPPOSE**
- **COLOMBIAN VICE-MINISTER OF EDUCATION VISITS COURT AND CALLS FOR CONCERTED EFFORTS IN ORDER TO DEVELOP AND PROMOTE NATIONAL EDUCATIONAL PROGRAMMES TO MANAGE VIOLENCE**

PREVIEW

- President Al Bashir will reportedly not travel to Malaysia, p. 6

Judges assess possibility of holding confirmation of charges hearing *in situ* in the Kenya cases

13 June - Pre-Trial Chamber II announced on 3 June that it was “assessing the desirability and feasibility of conducting the confirmation of charges hearing on the territory of the Republic of Kenya” and [requested](#) observations from the Prosecution, victim-applications and the Defence. The Prosecution [submitted](#) that it “considers that the security conditions make it impossible” to conduct the hearings in Kenya. The Prosecution underscored its legal duty to protect its witnesses against all foreseeable risks. The Prosecution stated: “As it currently stands, the Prosecution considers that its witnesses cannot be adequately protected within Kenya. The Chamber has previously been informed of the existing concerns about witness security. In the Prosecution’s View, the risks to witnesses/their families/perceived witnesses in Kenya are likely to be exacerbated if the proceedings take place in Kenya.”

Through the OPCV, victim-applicants [stated](#) that, in the present case, they “unanimously oppose holding the confirmation of charges hearings in Kenya [...], as holding the confirmation hearing in Kenya could increase the risk of violence, including against those who might be suspected of being actual or potential victim-applicants in the proceedings”.

The Defence for Kenyatta [submitted](#) that “a change of venue [for the proceedings] which delays those proceedings would be unacceptable and breach the right of the suspect to have the proceedings heard within a reasonable time.” The Defence for General Ali [requested](#) that the hearings take place in The Hague. The Defence for Mr. Ruto and Mr. Sang [elaborated](#) on the concern that “the temporary relocation of the case for isolated components of the case will cause disruption in Defence preparation, and impede the ability of the Defence to effectively participate in the confirmation hearing”.

The Defence for Muthaura [submitted](#) that it is in the interests of justice, the witnesses and the victims to the confirmation of charges hearing in Kenya, however, “unless the Court and the Government of the Republic Kenya are able to adequately provide for the safety and security of the victims and witnesses, and ensure proper and orderly conduct of proceedings, Amb. Francis Muthaura will not support conducting the confirmation of charges proceedings in Kenya.” Accordingly, Muthaura’s Defence invites the Court to consider Arusha as the next best alternative to Kenya. The Defence for Kosgey also made the case that there were numerous advantages to holding the hearings in Kenya, and it submitted, in the alternative, that the Chamber consider conducting the hearings in an East African country.



Colombian Vice-Minister for Education visits the Court to present Colombian efforts to develop educational programmes to manage violence

14 June - The Colombian Vice-Minister for Education, Mauricio Perfetti del Corral, visited the Court and met with the Office of the Prosecutor to present what Colombia has been doing in terms of educational programmes to reduce, manage and prevent violence. The Vice-Minister gave a guest lecture on “Conflict Resolution and Violence Prevention: The Citizenship Competencies Program of the Ministry of Education of Colombia”.

The Vice-Minister also met with representatives of States Parties and non-States Parties, as well as academics, in order to discuss sharing of experiences and best practices and further develop concerted efforts to link education and conflict management. The completion of the first trial of the ICC (*The Prosecutor vs. Thomas Lubanga*) will be an opportunity to focus on how States Parties and other relevant actors can maximize the work of the Court through their national curricula, and thus contribute to prevention. Interested States can contact the Office at OTP.Briefing@icc-cpi.int should they want to receive additional information or share comments on this matter.

I. Investigations and Prosecutions

Over the reporting period, the OTP presented 24 filings in the various cases and conducted seven missions in six countries.

I.1. Situation in the [Democratic Republic of the Congo](#) (DRC)

This situation was referred by the DRC in March 2004. The OTP opened its investigation in June 2004, focusing first on Ituri where some of the most serious crimes had been committed by the main armed groups. Four arrest warrants have been issued against [Thomas Lubanga Dyilo](#) and [Bosco Ntaganda](#), leaders of the UPC, and [Germain Katanga](#) and [Mathieu Ngudjolo Chui](#), leaders of the FNI and FRPI. The trial of [Thomas Lubanga Dyilo](#) began on 26 January 2009. The Prosecution filed its closing brief on 1 June. Oral closing arguments will be presented on 25 and 26 August 2011. The trial of Germain [Katanga and Mathieu Ngudjolo Chui](#) began on 24 November 2009; on 8 December 2010, the Prosecution concluded the presentation of its case. [Bosco Ntaganda](#) is at large. In September 2008, the OTP announced the start of its investigation into alleged crimes in the Kivus. On 28 September 2010 the judges issued an arrest warrant under seal against Callixte Mbarushimana, Executive Secretary of the FDLR. He was arrested on 11 October 2010 in Paris, and surrendered to the Court on 25 January 2011. The Confirmation of Charges Hearing is set for 17 August 2011.

8 June - FIDH and its member organisations in the DRC in an open letter to the UNSC [called](#) for a public communication campaign on the importance of DRC cooperation with the ICC, reflecting respect its own obligations to combat impunity for serious crimes, by transferring Bosco Ntaganda to the ICC, by fighting impunity for serious crimes at a national level and by adopting a legislation implementing the Rome Statute into Congolese law.

I.2. Situation in [Uganda](#)

This situation was referred by Uganda in January 2004. The OTP opened its investigation in July 2004. Five arrest warrants have been issued against [top leaders of the Lord's Resistance Army \(LRA\)](#): Joseph Kony, Vincent Otti (allegedly killed in 2007 on order of Kony), Okot Odhiambo, Raska Lukwiya (killed on 12 August 2006, whose arrest warrant has been withdrawn), and Dominic Ongwen. These arrest warrants are outstanding. Since early 2008, the LRA is reported to have killed more than 2,000, abducted more than 2,500 and displaced well over 300,000 in DRC alone. In addition, over the same period, more than 120,000 people have been displaced, at least 450 people killed and more than 800 abducted by the LRA in Southern Sudan and the Central African Republic.

8 June - Defense and Security Ministers of countries affected by the LRA, [met](#) in Addis Ababa under the chairmanship of AU Commissioner for Peace and Security, Ambassador Lamamra, to discuss regional cooperation against the LRA. They decided to set up a Ministerial level ad-hoc Joint Coordination Mechanism to take work forward at the strategic level and coordinate the efforts of the AU, the countries concerned as well as the support of partners in order to create a Regional Task Force, as a mission [authorised](#) by the AU. They launched an urgent appeal for international support for the mission.

9 June - 47 international and Congolese organisations [called](#) for states to provide additional resources for MONUSCO to protect civilians from LRA attack, highlighting the fact that more than 100 LRA attacks have been recorded since the beginning of 2011, and that nearly 340,000 people are displaced in DRC as a result of LRA activity. Despite this, fewer than 5% of MONUSCO forces are deployed in LRA-affected areas, and none permanently deployed in the area where it is reported that LRA leader Joseph Kony may be operating.

9 June - Spokesperson for the Ugandan Judiciary Justice Elias Kisawuzi [said](#) that the trial of captured LRA Commander Thomas Kwoyelo is scheduled to begin on July 7 in Gulu, Northern Uganda. Following its positive approach to complementarity and in accordance with article 93(10) of the Rome Statute, the OTP provided assistance to Ugandan investigators and prosecutors in support of their national case, thereby seeking to address the impunity gap. The OTP has

received a formal undertaking from the Ugandan authorities that any information shared by the OTP will be used in the context of proceedings that are consistent with internationally recognised human rights standards

I.3. Situation in [Darfur, the Sudan](#)

This situation was referred by the UN Security Council in March 2005. The OTP opened its investigation in June 2005. Three arrest warrants have been issued, against [Ahmad Harun and Ali Kushayb](#), and against [Omar Al Bashir](#), which are outstanding. Also three summons to appear have been issued, against [Bahar Idriss Abu Garda](#) and against [Abdallah Banda Abaker Nourain and Saleh Mohammed Jerbo Jamus](#). On 12 July, Pre-Trial Chamber I issued a [second warrant of arrest](#) against Omar Al Bashir for three counts of genocide committed against the Fur, Masalit and Zaghawa ethnic groups: genocide by killing, genocide by causing serious bodily or mental harm and genocide by deliberately inflicting on each target group conditions of life calculated to bring about their physical destruction. Abu Garda [voluntarily appeared](#) before the Court pursuant to a summons. The confirmation of charges hearing was held on 19-30 October 2009. On 8 February 2010 the Pre-Trial Chamber issued a decision declining to confirm the charges. The OTP [requested](#) leave to appeal this decision on 15 March and this was denied by the PTC on 23 April. The OTP will present additional evidence. On 25 May the PTC Chamber issued its '[Decision informing the United Nations Security Council about the lack of cooperation by the Republic of the Sudan](#)' in the case against Harun & Kushayb. On 17 June, Abdallah Banda Abaker Nourain and Saleh Mohammed Jerbo Jamus [appeared](#) voluntarily before the ICC, to answer charges of war crimes for their roles in the 2007 attack against African Union peacekeepers in Haskanita. The [confirmation of charges hearing](#) for Banda and Jerbo took place on 8 December 2010. On 6 March 2011, Pre-Trial Chamber I [confirmed](#) all of the charges against Banda and Jerbo. A date for the trial has not been set yet.

13 June - Former Federal Cabinet Affairs Minister and leading SPLM figure Luka Biong Deng [stated](#) that President Al Bashir will receive an invitation to the Southern Sudan independence day commemorations but it is up to him whether to accept or reject it.

14 June - The Director of the Sudan's Humanitarian Aid Commission (HAC), Ali Adam Hassan, [announced](#) a report on the performance of Western aid organizations, produced in order to reflect "*many of their weaknesses and errors in their performance*" and that "*decisive and binding resolutions*" would be announced in the next few days in order to reform the performance and objectives of aid groups in Darfur.

I.4. Situation in the [Central African Republic \(CAR\)](#)

This situation was referred by the CAR in December 2004. The OTP opened its investigation in May 2007. One arrest warrant has been issued against [Jean-Pierre Bemba Gombo](#) for crimes committed in 2002-2003. The [confirmation of charges hearing](#) was held on 12-15 January 2009. On 15 June 2009, Pre-Trial Chamber II rendered its confirmation of charges decision. On 18 September, the case was referred to Trial Chamber III. In parallel, the Office continues to monitor allegations of crimes committed since the end of 2005. The trial started on 22 November 2010. The Defence decided not to appeal the 17 December Decision on the review of detention of Mr. Jean-Pierre Bemba, pursuant to the Appeals Judgment of 19 November 2010.

I.5. [Kenya](#)

The Office made its examination of the post-election violence of December 2007-January 2008 public in February 2008. On 9 July 2009, the African Union Panel of Eminent African Personalities, chaired by Kofi Annan, announced the [submission to the OTP of a sealed envelope containing a list of persons allegedly implicated and supporting materials previously entrusted to Mr. Annan by the Waki Commission](#). On 5 November the Prosecutor informed President Kibaki and Prime Minister Odinga of his view that crimes against humanity had been committed and of his duty, in the absence of national proceedings, to act. Both the President and the Prime Minister committed to cooperate with the Court. On 26 November the Prosecutor requested authorization from Pre-Trial Chamber II to open an investigation, noting that: 1,220 persons had been killed; hundreds raped, with thousands more unreported; 350,000 people were forcibly displaced; and 3,561 injured as part of a widespread and systematic attack against civilians. On 31 March the Pre-Trial Chamber authorized the Prosecutor to commence an investigation covering alleged crimes against humanity committed between 1 June 2005 and 26 November 2009. The Prosecutor made his first visit to Kenya since the beginning of the investigation on 8-12 May and his second visit 1-3 December. The Prosecutor submitted two applications for summonses to appear regarding six individuals (William Samoei Ruto, Henry Kiprono Kosgey, Joshua Arap Sang, Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohamed Hussein Ali) on 15 December 2010. These individuals are alleged to be most responsible in accordance with the evidence. On 8 March 2011, Pre-Trial Chamber II [issued](#) the six summonses to appear. The six suspects voluntarily appeared before the Court on 7 and 8 April 2011. The Chamber scheduled the confirmation hearings on 1st and 21 September 2011.

10 June - The Government of Kenya filed an application, on 6 June, for leave to appeal the Pre-Trial Chamber's decision to make a final determination on the Admissibility Challenge before deciding on the Government's Cooperation Request. The

Prosecution filed a response on 10 June, submitting that this does not constitute an appealable issue within the meaning of Article 82(1)(d) of the Statute. The Prosecution also submitted that the issue failed to meet the requirements for leave to appeal. Consequently, the Prosecution requested that the application be rejected.

I.6. Libya

This situation was referred by the UN Security Council on 26 February 2011 by [Resolution 1970](#) (2011). As per the Rome Statute, the Prosecutor shall proceed with an investigation unless there is no reasonable basis to believe that crimes falling under the ICC jurisdiction have been committed. Following a preliminary examination of available information, the Prosecutor [decided](#) to open an investigation on 3 March 2011 and [requested](#) Pre-Trial Chamber I to issue arrest warrants against Muammar Abu Minya Gaddafi, Saif Al Islam Gaddafi and Abdullah Al Sanousi on 16 May.

9 June - The Libya Contact Group met in Abu Dhabi and discussed the situation since the last Contact Group meeting in May in Rome. Among other things, the Contact Group *“welcomed the decision by the Prosecutor of the ICC to formally request an arrest warrant for [Muammar] Qadhafi.”* The Contact Group [took note](#) of the report of the Libya Commission of Inquiry and condemned all violations of international humanitarian and criminal law. The Contact Group *“reiterated that all those individuals complicit in the regime’s crimes will be held to account, including all those with ICC indictments or directly involved in ordering attacks on civilians. It called on Qadhafi’s followers who do not want to be associated with human rights violations to disassociate themselves from the regime.”*

10 June - The Deputy Secretary-General of the League of Arab States, Ahmed Ben Helli, [stated](#) that the League’s commitment is to the will of the Libyan people and not the will of the Gaddafi regime. This statement came in response to the announcement of the Chairman of the African Mediation Committee that Gaddafi should step down, adding that there need to be some concessions on both sides. The Deputy Secretary-General of the League of Arab States stressed on the need to stop the bloodshed and the suffering of the Libyan people and stop the fait accompli dividing Libya between East and West.

II. Preliminary Examinations

Statistics on [Article 15 Communications](#) and other preliminary examination activities.

A preliminary examination is the first phase of the Office of the Prosecutor activities, in order to assess if an investigation should be opened. It is a phase during which the Office first assesses the jurisdiction of the Court, whether crimes falling under the ICC jurisdiction may have been, or are possibly being, committed in a given situation; if the conditions are met, whether genuine investigations and prosecutions are being carried out by the competent authorities in relation to these crimes; and, as a third step, whether the possible opening of an investigation by the Prosecutor would not go against the [interests of justice](#). During this phase, and in accordance with Article 15, the Office proactively evaluates all information on alleged crimes from multiple sources, including “communications” from individuals and parties concerned. The triggering of a preliminary examination does not imply that an investigation will be opened.

II.1. [Afghanistan](#)

The Office made its examination public in 2007. It examines alleged crimes within the jurisdiction of the Court by all actors involved. The OTP met outside Afghanistan with Afghan officials and organizations. The OTP sent requests for information to the Government of Afghanistan and has not yet received an answer.

II.2. [Colombia](#)

The Office made its examination public in 2006. It examines alleged crimes within the jurisdiction of the Court and investigations/proceedings conducted in Colombia against the allegedly most serious perpetrators, paramilitary leaders, politicians, guerrilla leaders and military personnel. The Office is also analyzing allegations of international networks supporting armed groups committing crimes in Colombia.

II.3. [Georgia](#)

The Office made its examination public on 14 August 2008. The Georgian Minister of Justice visited the OTP. Russia, a State not Party to the Statute, has sent 3,817 communications to the OTP. The Prosecutor requested information from the Governments of Russia and Georgia on 27 August 2008. Both the Russian and Georgian authorities responded. The Office conducted a visit to Georgia in November 2008 and to Russia in March 2010. A second mission to Georgia was conducted in June 2010.

II.4. [Palestine](#)

On 22 January 2009, the Palestinian National Authority lodged a declaration with the Registrar under Article 12(3) of the Rome Statute which allows States not party to the Statute to accept the Court's jurisdiction. The OTP will examine issues related to its jurisdiction: first whether the declaration accepting the exercise of jurisdiction by the Court meets statutory requirements; and second whether crimes within the Court's jurisdiction have been committed. The Office will also consider whether there are national proceedings in relation to alleged crimes. A delegation from the Palestinian National Authority, and Representatives of the Arab League visited the Court on 15-16 October 2009 to present a report in support of the PNA's ability to delegate its jurisdiction to the ICC. On 11 January, the OTP sent a [letter](#) summarizing its activities to the United Nations at their request. On 3 May, the OTP published a "[Summary of submissions on whether the declaration lodged by the Palestinian National Authority meets statutory requirements](#)." The OTP has not made any determination on the issue.

II.5. [Côte d'Ivoire](#)

The Court has jurisdiction over the situation in Côte d'Ivoire by virtue of an Article 12(3) declaration submitted by the Ivorian Government on 1 October 2003. The declaration accepts the jurisdiction of the Court as of 19 September 2002. On 17-18 July 2009, high-level representatives of the OTP visited Abidjan. On 4 May 2011, the President of Côte d'Ivoire, Alassane Ouattara, [confirmed](#) his wish for the OTP to conduct independent and impartial investigations into the most serious crimes committed since 28 November 2010 on the entire Ivorian territory. On 19 May, the Prosecutor informed the ICC President of his intention to submit a [request](#) to the Pre-Trial Chamber for authorisation to open investigations into the situation in Côte d'Ivoire since 28 November 2010.

II.6. [Guinea](#)

The Office made its examination of the situation in Guinea public on 14 October 2009. Guinea is a State Party to the Rome Statute since 14 July 2003 and, as such, the ICC has jurisdiction over war crimes, crimes against humanity and genocide possibly committed in the territory of Guinea or by nationals of Guinea, including killings of civilians and sexual violence. The Office has taken note of serious allegations surrounding the events of 28 September 2009 in Conakry in accordance with Article 15 of the Statute. In January 2010, OTP high level representatives held consultations with President Compaore of Burkina Faso, mediator for the contact group on Guinea, and President Wade of Senegal to ensure that they are informed of its work. From 15 to 19 February 2010, the OTP sent a mission to Guinea, led by Deputy Prosecutor Fatou Bensouda, in the context of its preliminary examination activities. From 19-21 May a second OTP mission met with the Guinean Minister of Justice, Col. Lohalamou, and Guinean judges. A third OTP mission, lead by Deputy Prosecutor Bensouda, went to Conakry from 8 to 12 November 2010, and met with President Sékouba Konaté, Prime Minister Doré, as well as both election candidates. The Guinean authorities extended full cooperation to the Court.

II.7. [Nigeria](#)

The Office made its examination of the situation in Nigeria public on 18 November 2010. Nigeria is a State Party to the Rome Statute since 27 September 2001. The Office has been analyzing the alleged crimes committed in Central Nigeria since mid-2004 and is looking forward to engaging constructively with the Nigerian authorities on the issue.

II.8. [Honduras](#)

The Office made its examination of the situation in Honduras public on 18 November 2010. Honduras is a State Party to the Rome Statute since 1 July 2002. The Office has received many communications on crimes linked to the coup of June 2009. There were different allegations, mostly regarding alleged massive cases of torture and more than a thousand people being arrested in one day. The Office met with the Honduras Minister Counsellor in The Hague on 22 November, who provided relevant information and promised their full cooperation.

II.9. [Republic of Korea](#)

The Office made its examination of the situation in the Republic of Korea public on 6 December 2010. Korea is a State Party to the Rome Statute since 13 November 2002. The Office of the Prosecutor has received communications alleging that North Korean forces committed war crimes in the territory of the Republic of Korea. The Office is currently evaluating if some incidents constitute war crimes under the jurisdiction of the Court. These incidents are: a) the shelling of Yeonpyeong Island on the 23 November 2010 which resulted in the killing of South Korean marines and civilians and the injury of many others; and b) the sinking of a South Korean warship, the Cheonan, hit by a torpedo allegedly fired from a North Korean submarine on 26 March 2010, which resulted in the death of 46 persons.

III. Cooperation – Galvanizing Efforts to Arrest

13 June - UN Secretary-General Ban Ki-Moon, speaking in Buenos Aires at the Joint Training Centre for Peacekeeping Operations, [said](#) *"In this world, there is no safe place now for any perpetrators who violate international human rights laws and international humanitarian laws. They must be held responsible: they must be brought to justice. This has been a fundamental principle*

and my strong commitment as Secretary-General of the United Nations. Here in Argentina, and around the world, we can clearly say the age of impunity is dead. The age of impunity is gone and a new era of accountability has arrived, an era where justice, sooner or later, will be done. [...] The path to healing and reconciliation begins with truth, with restoring historical memory. That is why I am here today, with humility, to encourage your authorities to continue to investigate, prosecute and sanction those responsible. Witnesses must be protected. So must judges, prosecutors and all those involved in the ongoing trials."

13-16 June - A number of Parliamentary and civil society organisations [called](#) on the Malaysian Government to withdraw an invitation to President Al Bashir to attend an international dialogue meeting from 19-21 June. Minister for Law and Parliamentary Affairs in the Prime Minister's Department, Mohamed Nazri Abdul Aziz [said](#) "I am taking this matter seriously and I want to discuss in the Cabinet because the Cabinet has decided that we should accede to the Rome Statute. [...] As such, I would strongly recommend to the government to withdraw the invitation". On 16 June, the Malaysian Foreign Minister [confirmed](#) that "pressing engagements" would mean that President Al Bashir would no longer be able to attend the meeting.

14 June - At their second regular meeting of the year, the Gulf Cooperation Council (GCC) issued a [communiqué](#) which did not include a previous paragraph expressing solidarity with Sudan and rejecting the warrant as well as all charges leveled against President Al Bashir. The meeting followed on the first regional conference held in Qatar in May, hosted by Qatar, the League of Arab States and the ICC. Officials from Qatar and Kuwait expressed their intention to ratify the Rome Statute but did not specify a timeframe. Further, a number of GCC States are part of the Libya Contact Group, which has endorsed the ICC's investigations in Libya.

14-15 June - OTP senior representatives participated in meetings in New York with the UN Offices, including OLAS, DPKO, UNDP, OCHA and UNHCR, and focusing *inter alia* on updates on recent developments on the OTP's activities, cooperation, exchange of information and best practices.

IV. Upcoming Events

- 16 June - Deputy Prosecutor speaks at the Atrocity Law and Policy Class at Utrecht University, Utrecht
- 21-23 June - Deputy Prosecutor Bensouda participates in the World Justice Forum, Barcelona

* This document reflects the views of the Office of the Prosecutor of the ICC. For more information, contact Mrs. Olivia Swaak-Goldman, International Cooperation Adviser in the Office of the Prosecutor, at Olivia.Swaak-Goldman@icc-cpi.int